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ABSTRACT

The Violent and Repeat Juvenile Offender Act of 1997 (S-10) contains provisions that would affect youths arrested for criminal offenses and status offenses (acts that are not crimes if committed by adults). A telephone survey was conducted by Opinion Research Corporation to determine public opinions about the provisions of S-10. A national probability sample of 503 men and 504 women, aged 18 and older, was surveyed. Survey results show strong public opposition to some of the most important elements of S-10. Respondents overwhelmingly opposed housing juveniles in adult jails, jailing status offenders with adults, sharing arrest records with prospective colleges, expelling students for smoking cigarettes, and granting prosecutors exclusive jurisdiction over whether juveniles should be tried as adults. Respondents also strongly supported setting aside funds in the new act specifically for juvenile crime prevention programs. (SLD)

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Research in Brief
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March 1998

The Will of the People? The Public's Opinion of the Violent and Repeat Juvenile Offender Act of 1997

by Vincent Schiraldi and Mark Soler[1]

INTRODUCTION

The United States Senate is expected to vote on a bill shortly which would radically alter America's juvenile justice system. The Violent and Repeat Juvenile Offender Act of 1997 (S. 10), co-authored by Senators Orrin Hatch (R-Utah) and Jeff Sessions (R-Alabama) contains sweeping provisions which would affect youths arrested for criminal offenses and status offenses (acts like truancy, curfew violations and running away from home which are not crimes if committed by adults), as well as acts for which they have never been arrested at all (such as smoking cigarettes on school grounds).

Among other provisions, S. 10 would:

(1) Allow teenagers arrested for crimes to be housed in adult jails for indefinite periods of time;

(2) Allow status offenders arrested for acts like truancy, curfew violations and running away from home to be jailed with adults for 24 hours or longer on weekends and holidays;

(3) Make juvenile felony arrest records available to colleges to which teenagers apply later in life, even if the youths were never convicted following those arrests;

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(4) Earmark funds for punishment and detention facility construction but not for prevention;

(5) Require that states expel teenagers from high school for up to 6 months for regular use of tobacco; and

(6) Give federal prosecutors sole, non-reviewable discretion to try juveniles as adults for *all* felonies.

In explaining the reasoning behind his legislation, Senator Hatch stated, "People are expecting us to do something about these violent teenagers. We've got to move on this."[2] While Americans certainly seem concerned about reforming the juvenile justice system, it is far from clear that the drastic provisions embodied in S. 10 represent the kind of "action" they have in mind. A review of polling data on the subject of juvenile crime paints a much more complex picture than is portrayed by the current legislation or Senator Hatch's remarks.

For example, although the public views juvenile crime as a serious problem, and supports strong punishment for violent crime, a substantial portion of the public believes in less harsh treatment for first-time offenders. Moreover, polls in several states indicate that large majorities support prevention programs and early intervention efforts and support restorative justice programs over prison time for non-violent youthful offenders.

These surveys described general public opinion over the past several years about a variety of juvenile justice issues. In order to obtain more recent and specific public opinion on S. 10's provisions, the Justice Policy Institute and the Youth Law Center commissioned a random survey of 1007 Americans conducted by Opinion Research Corporation International.

METHODOLOGY

Interviewing for this survey was conducted by Opinion Research Corporation during the period February 19 - 22, 1998. The report represents the findings of a telephone survey conducted among a national probability sample of 1007 adults comprising 503 men and 504 women 18 years of age and older, living in private households in the continental United States.

The most advanced probability sampling techniques were employed in the selection of households for telephone interviewing. Opinion Research Corporation utilizes an unrestricted random sampling procedure that controls the amount of serial bias found in systematic sampling to generate its random-digit-dial sample, which includes both unlisted numbers and

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2 "New Juvenile Crime Bill," in *the Bulletin Front-Runner*. July 14, 1997.

numbers issued after publication of the directories. The sample is fully replicated and stratified by region. Only one interview is conducted per household. All sample numbers selected are subject to up to four attempts to complete an interview.

In addition, we compared the Opinion Research Corporation findings to previously unreleased survey data from a 1996 poll of police chiefs' attitudes about jailing juveniles with adults. That survey of 548 police chiefs from around the country was conducted by John McDevitt, Ph.D. from Northeastern University.

FINDINGS

Kids in Adult Jails

In almost all states, teenagers arrested for a crime are not housed in adult jails or, if they are, are kept completely separate from adults. This bill would allow children to be housed in adult jails upon arrest. Do you agree strongly, agree somewhat, disagree somewhat, or disagree strongly that teenagers should be housed in adult jails?

Agree Strongly	14%
Agree Somewhat	16%
Agree Strongly/Somewhat	**30%**
Disagree Somewhat	22%
Disagree Strongly	45%
Disagree Strongly/Somewhat	**67%**
Don't know	3%

In 1974, the Juvenile Justice and Delinquency Prevention Act (JJDPA) was signed into law by President Gerald Ford. In order to be eligible for funding under the Act, states which housed juveniles in adult jails were required to keep them separate from adults. In 1980, following numerous suicides, assaults, and other tragedies involving juveniles in jails, the JJDPA was amended to require that states "remove" juveniles from jails, i.e. not hold juveniles in adult jails at all.

At the time, and in the ensuing years as states came into compliance with the JJDPA's provisions, there was mounting anecdotal and research evidence about the harm caused to juveniles in adult facilities. Research from 1980 by Michael Flaherty of the University of Illinois, Urbana-Champaign, showed that juveniles were eight times more likely to commit suicide in adult jails

than in juvenile detention facilities.[3] An analysis by Martin Forst, Jeffrey Fagan, and T. Scott Vivona of juveniles in adult prisons found that juveniles in adult facilities were five times more likely to be sexually assaulted, twice as likely to be beaten by staff, and 50% more likely to be attacked with weapons as youth in juvenile facilities.[4]

In the 18 years since the Act was amended, 45 out of 50 states have removed juveniles from their jails, and only two states do not adequately separate juveniles from adult inmates in their jails. In 1987, for example, California passed a law prohibiting juveniles from being held in county jails, sheriff's facilities, and other adult facilities. That legislation was spurred by the suicide of 15-year-old Kathy Robbins. Jailed for being in the town square after the curfew hour, Kathy Robbins hanged herself from the top rail of the bunk bed in her cell in the Glenn County Jail in rural California. She had been in the jail for a week, and a juvenile court judge had just refused to release her. She was one of six juvenile suicides that took place in adult jails in California between 1979 and 1984.

S. 10 affects the housing of juveniles with adults in two ways. It allows states to hold juveniles in jails indefinitely by eliminating the "removal" requirement.[5] S. 10 also allows juveniles to indefinitely have sight and sound contact with adult inmates, both now prohibited by the separation requirements of the JJDPA. Thus, under S. 10, juveniles could be in the cell next to adult inmates and talk with them through the bars, and could be with them in admissions, exercise, and medical areas of the jail.

In the present survey, two thirds (67%) of poll respondents disagreed somewhat or strongly with the proposition that teenagers should be housed in adult jails. This is more than twice as many respondents as agreed somewhat or strongly with jailing juveniles and adults together (30%).

More respondents held strong opinions in opposition to jailing youths with adults than the other way around. More than three times as many poll respondents disapproved strongly of jailing juveniles and adults together (45%) as agreed strongly with the practice (14%).

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[3] Flaherty, Michael G. *An Assessment of the national incidence of juvenile suicide in adult jails, lockups, and juvenile detention centers.* The University of Illinois, Urbana-Champaign. 1980.

[4] Martin Forst, Jeffrey Fagan, and T. Scott Vivona. *Youth in Prisons and Training Schools: Perceptions and Consequences of the Treatment Custody Dichotomy.* Juvenile and Family Court, No. 2, 1989, p.10.

[5] Current federal law allows juveniles to be held in adult facilities only for 6 hours for processing, or before or after court appearances, or for 24 hours in rural areas, and areas under emergency road conditions, not including weekends.

These results are similar to those found in a 1996 survey, heretofore unreleased, of the very people charged with the duty of apprehending delinquent youth -- America's police chiefs. In a survey of 548 police chiefs regarding the transfer of juveniles to adult courts, fully 83.2% agreed with the statement "we should make use of rehabilitation strategies for youth, and avoid placing juveniles in adult prisons where they may learn to be more effective criminals."[6]

Status Offenders in Adult Jails

Presently, juveniles arrested for status offenses -- offenses like running away from home, skipping school, and curfew violations -- cannot be jailed with adults. This bill would allow status offenders to be housed in adult jails for up to 24 hours. Do you agree strongly, agree somewhat, disagree somewhat, or disagree strongly that states should be allowed to house status offenders in adult jails for up to 24 hours?

Agree Strongly	9%
Agree Somewhat	16%
Agree Strongly/Somewhat	**25%**
Disagree Somewhat	19%
Disagree Strongly	55%
Disagree Strongly/Somewhat	**74%**
Don't know	1%

The Juvenile Justice and Delinquency Prevention Act requires that status offenders not be held in either jails or locked detention facilities.[7] Research found that status offenders were more likely than delinquents to be detained,[8] and that once detained, they stayed longer, were more vulnerable to victimization, and were more self-destructive.[9] Processing status offenders through the delinquency system may also influence these youth to see themselves as delinquent and become involved in delinquent behavior.[10]

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[6] Poll conducted in 1996 of 548 police chiefs around the country by John McDevitt, Ph.D., Northeastern University, Massachusetts.

[7] Federal law currently allows status offenders to be held in secure juvenile facilitates, but not jails, if they violate a valid court order.

[8] Marshall, Chris E., Ineke Haen Marshall, and Charles W. Thomas. "The Implementation of Formal Procedures in Juvenile Court Proceedings of Status Offenders." *Journal of Criminal Justice*, 11 (1983). pp. 195 - 211.

[9] Anne L. Schneider. "Deinstitutionalization of Status Offenders: The Impact of Recidivism and Secure Confinement." *Criminal Justice Abstracts*. (September, 1984). pp. 410 - 432.

[10] Weis, Joseph G. *Jurisdiction and the Elusive Status Offender: A Comparison of Involvement in Delinquent Behavior and Status Offenses*. Reports of the National Juvenile Justice

Further, when runaways and other status offenders were held in adult jails, they were often physically and sexually assaulted.

S. 10 would allow status offenders to be jailed with adults for 24 hours or longer if their incarceration fell on a weekend or holiday. Further, S. 10 provides that status offenders can be held in locked juvenile facilities with delinquents for up to 72 hours and, in the case of runaways, for up to 2 weeks.

From the standpoint of sheer numerical scale, this is no trivial matter. Using FBI arrest data, the National Center for Juvenile Justice has estimated that, in 1995, 249,500 juveniles were arrested as runaways and another 149,800 for curfew violations, the two most frequent status offenses.[11] By comparison, about a *third* as many juveniles (147,700) were arrested for all violent offenses *combined* in 1995. Ironically, the so-called Violent and Repeat Juvenile Offender Act could potentially affect status offenders far more frequently than youths arrested for violent offenses, and place them in perilous conditions.

Poll respondents disagreed strongly with housing status offenders in adult jails -- more strongly than they disagreed with any of the other provisions of S. 10 upon which they were polled. **Nearly three times as many respondents disapproved of jailing status offenders with adults (74%) as approved (25%).**

Those in strong disagreement with that proposal also greatly outnumbered those in strong agreement. **Respondents were six times more likely (55% vs. 9%) to disagree strongly with jailing status offenders with adults than they were to agree strongly.**

Assessment Centers, U.S. Department of Justice (Washington, DC: Government Printing Office, June 1980).

11 Sickmund, Melissa, Howard N. Snyder, and Eileen Poe-Yamagata. *Juvenile Offenders and Victims: 1997 Update on Violence.* Office of Juvenile Justice and Delinquency Prevention. August 1997. p. 17.

Confidentiality of Records

The bill would also allow felony arrest records of juveniles to be available to colleges to which they are applying for admission later in life, even if they were never convicted of the offense for which they were arrested. Do you agree strongly, agree somewhat, disagree somewhat, or disagree strongly that juvenile felony arrest records should be available to colleges to which youth are applying for admission, even if they were not convicted of the offense for which they were arrested?

Agree Strongly	9%
Agree Somewhat	18%
Agree Strongly/Somewhat	**28%**
Disagree Somewhat	25%
Disagree Strongly	45%
Disagree Strongly/Somewhat	**70%**
Don't know	3%

One of the foundations of the juvenile court, first established in America in 1899, was that juveniles were to be considered less culpable for their acts by virtue of their age and more deserving of a second chance following youthful misbehavior. It followed that youthful offenses and juvenile court proceedings were to be kept confidential so as to avoid stigmatizing youth when they matured out of their delinquent behavior into adulthood. Thus, a minor drug possession charge committed as a sophomore in high school would not prevent admission to a good college later in life.

S. 10 proposes to drastically alter the traditional confidentiality provisions of the juvenile court by creating a system of record-keeping for all juvenile felony arrests and making that information available to the youths' schools and *prospective* colleges.

Some changes in confidentiality laws have already been enacted. According to the National Center for Juvenile Justice[12], between 1992 and 1995, 40 states modified traditional juvenile court confidentiality provisions to open some records and make proceedings more open. Nevertheless, a February, 1998 analysis of the confidentiality provisions of S. 10, conducted by the National Center for Juvenile Justice at the request of the U.S. Senate, found that *every state would have to alter their juvenile justice laws to come into compliance*

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[12] Ibid. p. 28.

with the confidentiality provisions of S. 10.[13] The report also estimated the costs of implementing the record-keeping requirements of S. 10 "in the hundreds of millions of dollars."[14]

Seventy percent of poll respondents felt that juvenile arrest records should not be made available to colleges for which youths were applying for admission later in life. This was about twice as many respondents as felt that juvenile records should be made available to prospective colleges (28%). Five times as many poll respondents disagreed strongly with the practice as agreed strongly (45% vs. 9%).

Crime Prevention

The bill would allocate $500 million to states to spend on juvenile justice. While much of that money is specifically set aside to fund punishment, new detention facilities, and drug testing, no money is specifically set aside for things like recreational, job, or parenting programs designed to prevent crime in the first place. Do you agree strongly, agree somewhat, disagree somewhat, or disagree strongly that money should be specifically set aside in the new juvenile justice bill to fund prevention programs?

Agree Strongly	44%
Agree Somewhat	29%
Agree Strongly/Somewhat	**74%**
Disagree Somewhat	11%
Disagree Strongly	13%
Disagree Strongly/Somewhat	**24%**
Don't know	2%

Previous opinion polling has demonstrated public support of juvenile crime prevention programs, and the current poll shows that such attitudes are still strong. It is clear that the public wants a guarantee that in any new appropriations, money is specifically set aside for prevention programs.

Prevention programs work. The federally-funded Job Corps program accounted for about one-fourth of all federal funds spent on juvenile crime prevention programs in 1996. Careful evaluation of Job Corps has found it to

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[13] Snyder, Howard N. *An Assessment of Selected Provisions in Senate Bill 10.* National Center for Juvenile Justice, Pittsburgh, PA. February, 1998. p. 2.

[14] Ibid., p. 3.

be both effective in reducing juvenile crime and cost-efficient, returning more to taxpayers than it costs to operate.[15]

Home-visiting programs for low-income mothers, like Hawaii's Healthy Start Program, have been shown to cut incidents of child abuse and neglect (themselves precursors to delinquent activity) by more than half.[16] Graduates of intensive supervision and intervention programs, such as Multisystemic Therapy, were arrested for violent offenses at one third the rate of a control group during the four years after they left the program.[17] While this is by no means a comprehensive listing of effective crime prevention programs, it points to the fact that federal policy-makers should avoid "throwing out the baby with the bath water" when it comes to funding crime prevention programs for youth.

The Violent and Repeat Juvenile Offender Act of 1997 provides $500 million in federal juvenile justice funds, *none* of which is earmarked for prevention. By contrast, the legislation specifically earmarks funds for graduated sanctions and confinement facilities, record collection and dissemination, and drug testing.

Experience has shown that, when prevention funding is not specifically earmarked in juvenile justice legislation, it receives a smaller piece of the pie than interests represented by more powerful constituencies like law enforcement and prosecution. For example, under the Byrne Grants and Local Law Enforcement Block Grants -- in which prevention was one of the many uses for block grant funds -- no more than 9% of block granted funds was used for prevention.[18]

Seventy-four percent of poll respondents felt that funds should be specifically earmarked for prevention programs, about three times as many as those that felt there should be no such earmark (24%). Three times as many respondents were strongly in favor of prevention earmarks as were strongly opposed (44% vs. 13%).

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15 U.S. Congressional Budget Office, *How Federal Spending for Infrastructure and Other Public Investments Affects the Economy*, Washington, D.C. 1991, pp. 64-68.

16 David L. Olds et al, *Long Term Effects of Home Visitation on Maternal Life-course and Child Abuse and Neglect: Fifteen-year Follow-up of a Randomized Trial*, Journal of the American Medical Association, Vol. 276, No. 8, August 27, 1997. pp. 637-643.

17 Scott W. Henggeler, et al. "Multisystemic Therapy: An Effective Violence Prevention Approach for Serious Juvenile Offenders," *Journal of Adolescence*. Vol. 19, No. 1, 1996. pp. 47-61.

18 The Violent and Repeat Juvenile Offender Act of 1997, S. Rep. No. 105-108, 105th Congress, 1st Session. 173 (1997).

Smoking Cigarettes

Currently, states and local school boards set their own guidelines about disciplining students for smoking cigarettes in school. The bill would require that states pass laws requiring local school districts to expel students from school for up to six months for regular use of tobacco in order for those states to be eligible for millions of dollars of federal juvenile justice funds. Do you agree strongly, agree somewhat, disagree somewhat, or disagree strongly that states should be required to expel students for up to six months for regular use of tobacco?

Agree Strongly	13%
Agree Somewhat	14%
Agree Strongly/Somewhat	**27%**
Disagree Somewhat	23%
Disagree Strongly	49%
Disagree Strongly/Somewhat	**72%**
Don't know	1%

Cigarette smoking among juveniles is a serious and complex problem warranting national attention, particularly because the majority of adult smokers began smoking as teenagers. Under S. 10, states must require local school districts to expel students as follows:

- up to six months for possession and "regular use" of tobacco or alcohol
- from one week to six months for possession of any illegal drugs
- at least one year for possession of illegal drugs with intent to distribute or for possession of drug paraphernalia

Once again, although violent juvenile behavior drives media coverage of juveniles, and is the titular purpose of this legislation, non-criminal behavior like smoking cigarettes will rack up the real numbers. According to the Substance Abuse and Mental Health Services Administration, 4.5 million children ages 14 - 17 regularly use tobacco products.[19] Likewise, the Centers for Disease Control found that in 1993, 30% of kids in grades 9 through 12 reported smoking tobacco in the last 30 days and 11.5% reported using

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19 "Tobacco Related Statistics," 1995 Household Survey on Drug Use, SAMHSA, Washington, D.C.: U.S. Department of Health and Human Services.

chewing tobacco.[20] As such, under the provisions of S. 10, millions of American teenagers, over one third of all high school students, will be vulnerable to half-year suspensions for tobacco use.

Seventy-two percent of poll respondents disagreed with requiring six month expulsions for tobacco use, compared to only 27% who agreed with the practice. Nearly four times as many respondents strongly opposed this element of the legislation versus those that strongly supported it (49% vs. 13%).

Prosecutorial Waiver

Current law gives federal judges the authority to decide whether a juvenile will be prosecuted in juvenile or adult criminal court. This bill would give federal prosecutors total discretion, not subject to review by a federal judge, to try juveniles as adults for all felonies. Would you agree strongly, agree somewhat, disagree somewhat, or disagree strongly that federal prosecutors should have total discretion to try juveniles as adults for all felonies?

Agree Strongly	16%
Agree Somewhat	25%
Agree Strongly/Somewhat	**41%**
Disagree Somewhat	27%
Disagree Strongly	29%
Disagree Strongly/Somewhat	**56%**
Don't know	3%

Presently, states around the country have three primary methods of "waiving" the jurisdiction of the juvenile court and trying juveniles as adults -- judicial waiver, prosecutorial waiver, and automatic waiver. Under judicial waiver -- the traditional and most common approach -- the prosecutor typically brings a motion to try a juvenile as an adult, and there is a contested hearing in front of a judge who renders the final decision as to whether the juvenile is fit for juvenile court jurisdiction or should be tried in adult criminal court.

In an automatic waiver state, the legislature has enacted statutes providing that juveniles accused of certain (usually more serious) crimes are automatically tried as adults. In a prosecutorial waiver state, the prosecutor

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20 "State Tobacco Control Highlights." Atlanta Georgia: Centers for Disease Control and Prevention, 1996.

has discretion to proceed against a juvenile in juvenile court or adult court. In some states, the juvenile may appeal the prosecutor's decision to the trial judge through what has been termed a "reverse waiver" proceeding.

The evidence about the crime control effectiveness of trying juveniles as adults is very disheartening. Studies about juveniles prosecuted as adults consistently report that those juveniles have higher reoffense rates, more serious reoffenses, and reoffend sooner upon release from confinement, when compared to similar youths retained in the juvenile justice system.[21] Further, increased use of juvenile waiver was not shown to correlate with lower rates of juvenile homicide.[22]

For juveniles charged with federal offenses, S. 10 not only grants federal prosecutors discretion to try juveniles as adults for *all* felonies, but it also makes that discretion non-reviewable by federal judges. And S. 10 does not provide any "reverse waiver" provision.

Fifty-six percent of respondents disagreed with the proposal that prosecutors should be given sole, non-reviewable discretion over trying juveniles as adults, compared to only 41% who agreed with that proposal. Nearly twice as many respondents were strongly opposed to the idea compared to those who strongly supported it (29% vs. 16%)

CONCLUSION

Polling data on the Violent and Repeat Juvenile Offender Act of 1997 show strong public opposition to some of its most important elements. Respondents overwhelmingly opposed housing juveniles in adult jails, jailing status offenders with adults, sharing arrest records with prospective colleges, expelling students for smoking cigarettes and granting prosecutors exclusive discretion over whether juveniles should be tried as adults. Furthermore, respondents strongly supported setting aside funds in the new act specifically for juvenile crime prevention programs.

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21 See: Fagan, Jeffrey, *The Comparative Impact of Juvenile versus Adult Court Sanctions for Adolescent Felony Offenders*, 18 Law and Policy, 77-119, 1996; Winner, Lawrence, Donna M. Bishop, Lonn Lanze-Kaduce, and Charles Frazier, Vol., 35, *Crime and Delinquency*, in press, 1998.

22 Lotke, Eric and Vincent Schiraldi. *An Analysis of Juvenile Homicides: Where they Occur and the Effectiveness of Adult Court Intervention.* National Center on Institutions and Alternatives & Center on Juvenile and Criminal Justice. July, 1996.